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9 Third-Party Plaintiff Maritz Inc.

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT  
12 SAN FRANCISCO DIVISION

13 VISA U.S.A. INC.,

14 Plaintiff/Counterclaim  
15 Defendant,

16 v.

17 MARITZ INC., d/b/a MARITZ  
18 LOYALTY MARKETING,

19 Defendant/Counterclaim  
20 and Third-Party Plaintiff,

21 v.

22 CARLSON MARKETING GROUP, INC.

23 Third-Party Defendant.

CIVIL ACTION NO. C 07-5585 JSW

DECLARATION OF DORIS LYONS

1 I, Doris Lyons, do hereby declare under penalty of perjury as follows:

2 1. I am the Chief Operating Officer of the Maritz Loyalty Marketing Division of  
3 Maritz Inc. ("Maritz"). I have held this position since approximately February 1, 2006.

4 2. In the Fall of 2006, both I and others at Maritz had various discussions and  
5 communications with Visa relating to the Visa Extras Rewards Program project. One topic  
6 discussed was what the parties (i.e., Maritz and Visa) should do in light of the many difficulties,  
7 problems, and delays in connection with the project, including difficulties caused by Visa and its  
8 then-current vendor, Carlson Marketing ("Carlson").

9 3. In light of these problems, difficulties and delays, Maritz recommended that Visa  
10 postpone the launch date until January 2007. Visa, instead, decided to push ahead for a Fall 2006  
11 launch, moving the launch date back incrementally from September 30 until, eventually, mid-  
12 November 2006.

13 4. Maritz was concerned because of the many problems, delays and difficulties being  
14 encountered and made clear to Visa that Maritz would need assurances that Visa would not hold  
15 Maritz accountable if Maritz was going to continue to proceed under Visa's tight timeframe.  
16 Both I and others at Maritz conveyed our concerns to (among others) Mr. Edward "Tad" Fordyce  
17 of Visa. Mr. Fordyce was a management-level Visa employee who was operating as a program  
18 manager for Visa with respect to Visa's Rewards Program project. As set forth in Section VI.J.  
19 of the Master Services Agreement dated April 17, 2006 (the "Agreement"), Maritz was entitled  
20 to rely on communications from Mr. Fordyce with respect to the project, as well as from any of  
21 his superior officers (one of whom was Visa's Tim Attinger). A copy of Section VI.J. of the  
22 Agreement is attached to my Declaration as Exhibit 1.

23 5. As a result of Maritz's concerns and the delays, problems and difficulties  
24 encountered in connection with the project, Maritz and Visa agreed on November 8-9, 2006, that  
25 the parties would proceed on a best efforts basis and that the penalty clause (i.e., the "liquidated  
26 damages" provision) of the parties' Agreement would not be imposed. A true and accurate copy  
27 of the emails exchanged between Mr. Fordyce and me dated November 8 and 9, 2006 are  
28 attached hereto as Exhibit 2. These emails reflect the parties' agreement to proceed on a best

1 efforts basis and that Visa waived its right to liquidated damages in connection with the parties'  
2 Agreement.

3 I declare under penalty of perjury under the laws of the United States of America that the  
4 foregoing is true and correct and that this declaration was executed on January 17, 2008.

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6   
7 Doris Lyons